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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,977	11/14/2003	Tsutomu Okabe	245166US3CIP	7502
22850	7590	08/04/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
MOORE, KARLA A				
ART UNIT		PAPER NUMBER		
1792				
NOTIFICATION DATE		DELIVERY MODE		
08/04/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/706,977

**Applicant(s)**

OKABE ET AL.

**Examiner**

KARLA MOORE

**Art Unit**

1792

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 13-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1 is provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 10/706,915. Although the conflicting claims are not identical, they are not patentably distinct from each other because they contain recitations drawn to the same structures and relationships between those structures, where there are only slight stylistic differences in the language that is used. The claimed inventions would be obvious variations of one another to one of ordinary skill in the art.

3. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-3 and 13-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Line 14 of claim 1 includes the recitation "wherein when said door member closes said first opening to open or close the access opening and said first opening...", which is unclear. Examiner can not determine whether or not the recitation is referring to a situation where the first opening is closed or open, or another situation altogether. Examiner has interpreted the limitation as "wherein when said door member closes said first opening to close the access opening and said first opening". Correction and/or clarification is requested.

7. Line 22 of claim 1, line 2 of claim 3, lines 3 and 7 of claim 13, line 3 of claims 14 and line 2 of claims 15 each include the phrase "the door" or "said door", Examiner has assumed that each of the phrases was meant to read "the door member" or "said door member". Correction and/or clarification is requested.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-3 and 13-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Japanese Patent No. 05-109865 A to Kono et al.

10. Regarding claim 1, Kono et al. disclose a wafer processing apparatus for processing a wafer transferred from a clean box (10) having an access opening (not numbered) to allow accessing an inside of the clean box and a lid (21) to close the access opening, wherein the inside of the access opening is separated from a circumstance of the outside of the clean box by closing the access opening with the lid, said wafer processing apparatus comprising: a chamber (1); a first opening (not numbered) formed on a wall of said chamber, said first opening allowing for transferring a wafer between the clean box and the chamber through said first opening; a door member (31) capable of holding the lid of the clean box so as to open and close the access opening and said first opening from an inside of said chamber, wherein an outer periphery of the door member is larger than a periphery of said first opening to cover a whole part of said first opening from inside the chamber, wherein when said door member closes said first opening to close said access opening and said first opening form an inside of the chamber, a first gap (around sides of the door member, horizontal

and vertical portions) is formed between the wall of the chamber and an outer periphery portion of said door member, which portion (i.e. the outer periphery portion of the door member) is larger than the outer periphery of said first opening, wherein in said first gap the capability exists of a flow rate of gas flowing from the chamber to an outside of the chamber through said first gap is substantially equal to a flow rate of gas flowing out from a second gap (existing when the clean box is not in contact with the chamber) formed between the clean box and an outer surface of the wall of the chamber. With respect to the specific pressure of the chamber (and other limitations drawn to an intended use of the claimed apparatus), the courts have ruled that a claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). The courts have also ruled that claims directed to apparatus must be distinguished from the prior art in terms of structure rather than function. In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

11. With respect to claim 2, a dimension of said first gap and an inside pressure of the chamber may be defined such that the gas does not flow into an inside of the clean box through said first gap.

12. With respect to claim 3, when said door member is closed, said first gap may be maintained in gas fluidical communication with an inside and an outside of the chamber.

13. With respect to claim 13, one or more gas flow paths (3A and 3B) are formed in at least a vicinity of edges of said door member, wherein said first gap is in fluidical

communication with said one or more gas flow paths, and wherein the capability exists that a flow rate of gas flowing through the one or more gas flow paths is substantially equal to a flow rate of gas flowing from the inside of the chamber to the outside of the chamber through said first opening when the door member is closed.

14. With respect to claim 14, the first gap is uniformly formed along a side of an outer peripheral shape of the door member.

15. With respect to claim 15, the door member is in substantially the shape of a square.

16. With respect to claim 16, the first gap is uniformly formed along a side of an outer peripheral shape of the lid when the lid is inserted through said first opening.

***Response to Arguments***

17. Applicant's arguments filed 19 May 2008 have been fully considered but they are not persuasive.

18. Applicant has argued that the gaps disclosed in Konno are sealed and thus do not read on the claims. Examiner disagrees, for the following reason. The Applicant's claims do not necessitate that the gaps are unsealed, just that they are present. As described above, Konno structurally discloses first and second gaps, as claimed. Examiner also notes that a flow rate of zero is at least one situation where a flow rate of gas flowing through the first gap and the second gap could be equal.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KARLA MOORE whose telephone number is (571)272-1440. The examiner can normally be reached on Monday-Friday, 9:00 am-6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Parviz Hassanzadeh can be reached on 571.272.1435. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karla Moore/  
Primary Examiner, Art Unit 1792  
30 July 2008